

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte DALE B. SCHENK

Appeal 2006-3375
Application 09/723,765
Technology Center 1600

Decided: October 16, 2007

Before TONI R. SCHEINER, ERIC GRIMES, and
NANCY J. LINCK, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant has requested rehearing of the decision entered March 16, 2007. That decision reversed rejections for nonenablement and lack of written description, and affirmed rejections for obviousness-type double patenting.

Appellant states that he “agrees with the ultimate holding of the Decision on Appeal” (Req. Rhg. 2) but requests that we grant rehearing in order to address a specific argument made by the Examiner in the Answer;

specifically, that the instant claims “lack enablement absent evidence of a complete cure or complete prevention of Alzheimer’s disease” (*id.*).

Appellant’s request is denied, for two reasons. First, the purpose of a Request for Rehearing is to point out issues of law or fact “believed to have been misapprehended or overlooked in rendering the Board’s opinion,” 37 C.F.R. § 41.79, not to request elaboration upon the reasoning in an opinion. Second, we do not agree that we overlooked the argument that Appellant points to in his Request for Rehearing. The opinion states:

A method of treatment can be enabled even if it has not been shown to be, and even if it never turns out to be, clinically useful. “[O]ne who has taught the public that a compound exhibits some desirable pharmaceutical property in a standard experimental animal has made a significant and useful contribution to the art, even though it may eventually appear that the compound is without value in the treatment of humans.” *Brana*, 51 F.3d at 1567, 34 USPQ2d at 1442 (quoting *In re Krimmel*, 292 F.2d 948, 953, 130 USPQ 215, 219 (CCPA 1961)). If those skilled in the art would reasonably expect the claimed method to produce a therapeutic effect, it can be enabled even if it has not (yet) been shown to be safe and effective in clinical trials.

(Opinion issued March 16, 2007, p. 11-12.) In our view, this part of the opinion reasonably appears to address the subissue of concern to Appellant.

SUMMARY

We have considered Appellant's Request for Rehearing but decline to make any substantive change in our previous opinion.

REHEARING DENIED

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